



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Bryan P. Roberston, Treasurer
Governor Dave Heineman Committee
1610 N Street, Suite 100
Lincoln, NE 68508

JUN 13 2011

RE: MUR 6432
Governor Heineman Committee

Dear Mr. Robertson:

On November 15, 2010, the Federal Election Commission notified the Governor Heineman Committee ("Committee") and you, as treasurer, of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended. The Commission re-notified you and the Committee of the complaint on November 30, 2010, due to a typographical error in the case number. On June 7, 2011, the Commission found, on the basis of the complaint and information provided in responses to the complaint, that there is no reason to believe the Committee violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT: Governor Heineman Committee MURS: 6401 and 6432**

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6 **I. INTRODUCTION**

7 This matter was generated by complaints filed with the Federal Election Commission by
8 the Nebraska Democratic Party and Bold Nebraska alleging a violation of the Federal Election
9 Campaign Act of 1971, as amended ("the Act"), by the Governor Heineman Committee ("the
10 Heineman Committee").

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Facts**

13
14 The complaints in these matter allege that the Heineman Committee accepted a \$2,500
15 prohibited foreign national donation from TransCanada Corporation ("TransCanada"), a
16 Canadian corporation, or one of its foreign subsidiaries that the Committee reported as received
17 from "TransCanada Keystone Pipeline." TransCanada Keystone Pipeline, GP, LLC
18 ("Keystone"), is a limited liability company registered in Delaware and headquartered in Texas
19 with operations in Omaha, Nebraska. Keystone is the general partner in TransCanada Keystone
20 Pipeline, LP ("Keystone LP"), a Delaware limited partnership. Keystone jointly owns and
21 controls Keystone LP with a limited partner, TransCanada Keystone Pipeline, LLC, another
22 Delaware limited liability company. Keystone and its limited partner are, in turn, subsidiaries of
23 a Delaware corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-
24 owned by TransCanada. TransCanada is an energy infrastructure company that, among other
25 things, develops and operates natural gas and oil pipelines in North America. Keystone LP is
26 apparently responsible for constructing and operating the U.S. portion of an oil pipeline that

1 transports crude oil from Alberta, Canada, to U.S. markets. *See* TransCanada March 14, 2008,
2 press release available at www.transcanada.com/3036.html.

3 As general partner, Keystone directs all of the activities of Keystone LP, and Keystone
4 employees approved and directed Keystone LP to make the donation at issue in this matter.
5 According to Keystone, sometime before December 11, 2009, Beth Jensen, its Director of
6 Government Relations and a U.S. citizen, reviewed with outside counsel the permissibility and
7 attendant reporting requirements, under state law, of making donations to Nebraska state
8 candidates. Subsequently, Jensen approved donations of \$2,500 each to the Heineman
9 Committee and another state candidate committee. Jensen sent an email on December 11, 2009,
10 instructing TransCanada's Accounts Payable staff to issue checks from Keystone operating funds
11 to the two state campaigns. The Accounts Payable center, located in Calgary, Alberta, processed
12 the checks. The Accounts Payable center issued the checks on a Keystone-controlled "U.S.
13 funds Citibank account" in the name of Keystone LP and sent them to Jensen. Jensen then
14 forwarded the checks to Kissel E&S Associates, an Omaha, Nebraska-based outside consulting
15 firm engaged by Keystone in its government relations efforts. Kissel representatives hand-
16 delivered the checks to the candidate committees, apparently in January 2010.

17 A copy of the Heineman Committee's donation check shows that it was drawn on an
18 account of "TransCanada Keystone Pipeline, LP, 450 1st Street S.W., Calgary Alberta 502 5H1."
19 A printed notation on the check face underneath the amount reads "U.S. FUNDS, TransCanada
20 Keystone Pipeline, LP." The check also indicates the bank where the account was maintained is
21 Citibank, N.A., at an address in New York City.

22 As required under Nebraska law, on February 2, 2010, Jensen filed with the Nebraska
23 Accountability and Disclosure Commission ("NADC") a Form B-7, "Report of Political

Contributions of a Corporation, Union or Other Association,” for the Heineman Committee donation. In that form, Keystone asserts that Jensen erroneously identified TransCanada Corporation as the donor. The form lists another Omaha, Nebraska, address where Keystone operates locally. The Form B-7 has since been amended to show Keystone LP as the donor.

The Heineman Committee’s initial disclosure report shows that it erroneously reported the donation at issue.¹ It reported receiving a \$2,500 donation from TransCanada Keystone Pipeline at the 450 1st St. address printed on the check but listed the city and state as Omaha, Nebraska, rather than Calgary. See MUR 6401 Complaint attachment, Heineman Committee NADC Form B-1, Schedule B, page 10 of 11; MUR 6432 Complaint, Ex. 1.

According to the complaint in MUR 6432, an auditor at the NADC discovered that the 450 1st street address belonged to TransCanada in Calgary, Alberta. MUR 6432 Complaint at 2 and Ex. 3. The Heineman Committee states that the NADC contacted it on September 30, 2010, about the possibility that the Keystone LP donation may not have been from a U.S. corporation. Heineman Committee Response at 1.² That same day, the Committee issued a refund check to “TransCanada Keystone Pipeline, LP.” *Id.* at 5.

B. Analysis

The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a donation made in connection with a Federal, State, or local election from a foreign national. See 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

¹ It appears that only the most current version of the state disclosure report is available on the NADC’s website since the report for the period in question now available on-line has been amended. The NADC website states that the website database is based on the paper records filed with the NADC and that the paper records constitute the official records. See NADC website at <http://nadc.nol.org/ccdb/search.cgi>.

² The reference to the Heineman Committee Response is to its response in MUR 6401. The Committee responded to the complaint in MUR 6432 by referencing its earlier MUR 6401 response.

1 The Act and Commission regulations define “foreign national” to include “foreign
2 principals,” as defined in 22 U.S.C. § 611(b), and an individual who is not a citizen or national of
3 the United States and who is not a permanent resident. 2 U.S.C. § 441e(b). A “foreign
4 principal” includes “a partnership, association, corporation, organization, or other combination of
5 persons organized under the laws of or having its principal place of business in a foreign
6 country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

7 In past advisory opinions, the Commission has permitted a U.S. subsidiary of a foreign
8 national corporation to make donations and disbursements in connection with state and local
9 elections when: (1) the donations and disbursements derive entirely from funds generated by the
10 subsidiary and not from funds provided by the foreign parent; and (2) when all decisions
11 concerning the donations and disbursements are made by U.S. citizens or permanent residents,
12 except for setting the overall budget for donations. *See* Advisory Opinions 2006-15
13 (TransCanada)(wholly-owned domestic subsidiaries of a foreign corporation that receive no
14 subsidies from their foreign parent or other foreign national may make donations to state and
15 local candidates as long as no foreign national participates in the decision-making, except for
16 setting overall budget amounts, and they use funds generated by their domestic operations
17 maintained in U.S. bank accounts); 1992-15 (Nansay Hawaii)(wholly-owned subsidiary of a
18 foreign corporation that received some subsidies from its foreign parent may make donations in
19 connection with state and local elections where it currently had substantial net earnings
20 generated by its domestic operations placed in segregated accounts that received no subsidies,
21 and provided that, in the future, it could demonstrate through a reasonable accounting method
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided
23 by its foreign national parent).

1 Keystone has stated that the donation to the Heineman Committee was made with U.S.
2 operating funds from an account maintained in a U.S. financial institution. It has also pointed
3 out that the donation check was drawn on a New York Citibank, N.A. bank account and bears the
4 notation "U.S. Funds" on the check face. It has also explained that the Canadian address on the
5 check is that of TransCanada's Accounts Payable center, an office that merely processes
6 payments authorized by operating units of TransCanada, including Keystone. Finally, Keystone
7 has stated that Keystone LP received no subsidies from foreign nationals and generated
8 substantial net earnings from which it funded the donations. There is no information indicating
9 that the donation was derived from non-U.S. funds.

10 With respect to the status of those involved in making the donation, Keystone identifies
11 only Beth Jensen, a U.S. citizen, and describes her role as approving and directing the
12 disbursement of the donation. Keystone maintains, however, that no foreign individual or entity
13 "participate[d] in the decision making process regarding the making of the contribution[]" and
14 none directed or controlled the donation. Consequently, it may be that Ms. Jensen was the sole
15 decision-maker involved in making the donation or that Keystone decided not to specifically
16 identify other non-foreign nationals who were involved in the decision-making process. In any
17 case, the Commission possesses no information that any non-U.S. citizen or non-permanent
18 resident was involved in the decision to make the donation.

19 The Heineman Committee promptly refunded the donation when NADC notified it of a
20 potential problem with the donation. Heineman Committee Response at 1 and 5 (refund check).
21 The Committee contends that any potential violation was inadvertent and requests that the
22 Commission dismiss it from these matters. Heineman Committee Response at 1.

**Factual and Legal Analysis
Governor Heineman Committee**

1 Based on the available information, it appears that the donation to the Heineman
2 Committee was made using funds generated by a domestic subsidiary that received no subsidies
3 from a foreign national, and that no foreign national was involved in the decision to make the
4 donation. Therefore, the Commission has determined to find no reason to believe that the
5 Governor Dave Heineman Committee violated 2 U.S.C. § 441e by accepting a foreign national
6 donation.

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